

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
K. SHEPELA and S. SHEPELA,) OTA NO. 240917452
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 APPELLANTS.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, June 25, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:33 a.m. and concluding at 10:59 a.m.
on Wednesday, June 25, 2025, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: SHERIENE ANNE RIDENOUR

For the Appellants: K. SHEPELA

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

DAVID MURADYAN
NANCY PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-5 were received into evidence via Minutes and Orders.)

(Department's Exhibits A-E were received into evidence via Minutes and Orders.)

P R E S E N T A T I O N

	<u>PAGE</u>
By Mr. Shepela	7
By Mr. Muradyan	15

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Shepela	22

1
2
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California; Wednesday, June 25, 2025

10:33 a.m.

JUDGE RIDENOUR: We are opening the record in Office of Tax Appeals oral hearing for the Appeal of Kevin and Suzanne Shepela, OTA Case No. 240917452. Today's date is June 25th, 2025, and the time is 10:33 a.m. This hearing is conducted virtually with the agreement of the parties.

This appeal is being heard and decided by a single Administrative Law Judge under OTA's Small Case Program. My name is Sheriene Ridenour, and I will be conducting the hearing, reviewing the evidence, and reaching a determination in this appeal.

For the record, will the parties please state their names and who they represent, starting with representatives for FTB.

MR. MURADYAN: David Muradyan. I represent the FTB.

MS. PARKER: Nancy Parker. I also represent the FTB.

JUDGE RIDENOUR: Okay. And for Appellant.

MR. SHEPELA: Kevin Shepela, representing myself.

JUDGE RIDENOUR: Great. Thank you.

As stated in my Minutes and Orders dated

1 May 30th, 2025, there's one issue in this appeal, whether
2 Appellants have established reasonable cause for failing
3 to make a timely payment of tax for the 2023 tax year.

4 The exhibits are listed in the exhibit log.
5 During the prehearing conference, FTB raised no objection
6 to Appellants' Exhibits 1 through 5, and they were
7 admitted into evidence. During the prehearing conference,
8 Appellants raised no objections to FTB's Exhibits A
9 through E, and they were admitted into evidence.

10 FTB previously indicated it will not call any
11 witnesses. Appellants indicated that Kevin Shepela will
12 be testifying today, and FTB raised no objections. As
13 such, he will be sworn in before Appellants' presentation,
14 and there are no other witnesses today.

15 As a reminder to the party, during our prehearing
16 conference, we decided that Appellants will have
17 10 minutes to make their presentation, followed by FTB who
18 will also have 10 minutes. Then Appellants will have
19 2 minutes to provide closing remarks, should they choose.
20 Each party is encouraged to monitor their own time.

21 Does anyone have any questions before we move on
22 to presentations?

23 Mr. Shepela?

24 MR. SHEPELA: No.

25 JUDGE RIDENOUR: No.

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Mr. Muradyan?

MR. MURADYAN: No.

JUDGE RIDENOUR: Okay. Thank you very much.

Before we proceed, Mr. Shepela, I need to put you under oath so that your statements will be considered as testimony. And please remember you will remain under oath until the close of the hearing. Will you please raise your right hand.

K. SHEPELA,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined, and testified as follows:

JUDGE RIDENOUR: Thank you very much.

The time is now 10:35, and when you are ready, Mr. Shepela, please begin your presentation.

MR. SHEPELA: Sure.

PRESENTATION

MR. SHEPELA: The -- as we're -- as we're here we're here to talk about reasonable cause, the courts -- the courts have affirmed in many cases, reliance on a tax professional can establish reasonable cause to abate penalties so long as the taxpayer's reliance is in good

1 faith based on full disclosure of relevant facts and upon
2 competent and qualified advisors. Since the only issue at
3 hand today is reasonable cause, we can surmise that
4 there's no debate --

5 JUDGE RIDENOUR: Mr. Shepela, I'm going to stop
6 you. I can tell by Ms. Alonzo's face she's having a hard
7 time with your speed, and I understand. When I read off
8 too, it's hard for me to keep.

9 MR. SHEPELA: Okay.

10 JUDGE RIDENOUR: So just take your time. If you
11 go over the 10 minutes, that's fine.

12 MR. SHEPELA: Sure.

13 JUDGE RIDENOUR: I'd rather you get a clear
14 record. Okay. So please --

15 MR. SHEPELA: Okay. So start over?

16 JUDGE RIDENOUR: Ms. Alonzo, would you like him
17 to start over? No. Okay.

18 Go ahead. You can proceed where you left. Thank
19 you.

20 MR. SHEPELA: Sure. Since -- since the only
21 issue on hand today is reasonable cause, we can summarize
22 that there's no debate that I was working with a competent
23 and qualified adviser who timely filed on my behalf based
24 on a full set of relevant facts for the tax year.

25 The Tax Code states that's there's an ordinary

1 person test for penalty to be imposed, specifically, that
2 cause will allow for an abatement of penalty must be
3 cause, that would prompt an ordinary person to have acted
4 under similar circumstances. While an ordinary person or
5 reasonable person bench mark is widely accepted and
6 certainly would -- and certainly would have passed this
7 bench mark, reasonable cause is undefined term in the code
8 and is only further defined by case law.

9 I contend that a thorough review of the submitted
10 supported documents was probably not completed, and that
11 the FTB chose to ignore the entirety of Justice Burger's
12 opinion in Boyle. If the FTB had reviewed the email
13 correspondence and exhibits with my CPA, they would have
14 clearly concluded that there was will -- no willful
15 neglect. In fact, they would have found that I acted in
16 good faith by both confirming and reconfirming between the
17 dates of April 2nd and April 4th this year with my CPA
18 that there was no tax liability. They would have found
19 that I timely completed and returned Form 8879 for my CPA
20 to file on my behalf.

21 An ordinary person would have taken their trusted
22 advisor's initial direction on its face. However, I
23 demonstrated a higher duty of care by confirming --
24 confirming multiple times to ensure that I continued to
25 act in good faith and comply with my obligation. Per

1 Justice Burger's opinion in Boyle, when an accountant or
2 attorney advises the taxpayer on a matter of tax law, such
3 as whether a liability exists, it is reasonable for the
4 taxpayer to rely on that advice.

5 Furthermore, most taxpayers are not competent to
6 discern error in substantive advice or in -- of that of an
7 accountant or an attorney. To require the taxpayer to
8 challenge the attorney to seek a second opinion or to try
9 and monitor a counsel on a provision of the Code itself
10 would nullify the very purpose of seeking the advice of a
11 presumed expert in the first place. He references Haywood
12 Lumber Super at 771, ordinary business care and prudence
13 do not demand such actions. The unfortunate but incorrect
14 direction from my trusted advisor has clearly created a
15 reasonable cause as an ordinary person may not have even
16 questioned the advice given and, certainly, wouldn't have
17 confirmed on two different occasions whether it was
18 correct.

19 While my original argument relied primarily on
20 the stress and strain caused by losing my father, the fact
21 remains that it was reliance on erroneous advice from a
22 trusted adviser that is directly responsible for the
23 untimely payment of -- untimely payment, and my father's
24 passing was merely a contributing factor. Despite the
25 fact that the IRS recognizes the death or illness of a

1 taxpayer or a member of the immediate family as reasonable
2 cause, I still performed a higher duty of care of that of
3 a reasonable -- than that of a reasonable person.

4 I neither missed a statutory filing, nor did I
5 passively rely on an accountant. Conversely, I was
6 actively engaged in the timely filing and payment of --
7 payments of four returns in addition to my own and was
8 provided erroneous information twice about my tax
9 liability. Over the years, the complicated -- the
10 complication of calculating estimated taxes, due to the
11 lumping nature of RSUs I was vesting, had caused an
12 increased reliance on my accountant to provide a highly
13 distilled view of my net liability; and this is the very
14 reason I inquired about the liability via email, and then
15 reconfirmed my responsibility, all the while making
16 payments for other filings under my purview.

17 Finally, the circumstances truly do matter. And
18 this is why the courts have been asked to render decisions
19 when reasonable cause comes into play. Throughout my
20 review of volumes of OTA case denials and abatements -- of
21 abatement, I found -- I found three themes that were
22 inconsistent with my set of facts. Number one, little to
23 no instance of timely filing but untimely payments, unless
24 it was a matter of extensions or incorrect absent -- or
25 absent estimated calculations.

1 For instance, in the Appeal of Sidney G. Friedman
2 and Ellen Friedman, they attempted to schedule an
3 estimated payment. They never reconciled their own bank
4 accounts. I conducted the very due diligence that the OTA
5 said would have qualified -- required -- would have been
6 required to establish reasonable cause. After being told
7 twice there was no tax liability, I triple checked and
8 cured nine days later. Not nine months later as the
9 Friedmans did, but nine days later. The Friedmans only
10 cured after being given a notice.

11 Secondly, I found that many denials were due to
12 complicated financial events that might have happened;
13 estate settlements, transactions, early IRA distributions,
14 and prior year corrections that triggered and probably
15 necessitated a higher degree of care and stewardship by
16 the taxpayer in that given year. Mine was not the case.
17 Mine was a very vanilla filing on an average year. There
18 were no -- there were no complicated financial
19 transactions that happened.

20 In the case of -- in the case of the Appeal of
21 Roger Sly -- Sleight, he -- he was involved in a very
22 complicated real estate transaction with no proof given by
23 the complexity of the valuation process that he was
24 utilizing. He made a payment after a notice was given by
25 the FTB. He should have been involved in that process

1 with his accountant. The same holds true for the Appeals
2 of M.B. and G.M. Scott. During the -- during their tax
3 year, they disposed of multiple rental units and a sale of
4 corporation, and they were unable to -- to calculate the
5 proper estimated taxes by the deadline. These are both
6 financial complicated transactions that occurred during
7 the tax year, that they neglected to pay attention to.

8 In the case of -- and -- and along the same lines
9 in -- in lacking business prudence, there's the case of
10 the Appeal of Triple Crown. The gentleman was involved in
11 a traumatic car accident but -- which would have been --
12 which would have been enough to establish reasonable
13 cause, but he failed to heed to multiple notices during
14 that time. So also, a denial there. U.S. versus Kroll,
15 an estate settlement happened to be untimely. The -- the
16 Knolls [sic] did not -- or Kroll did not manage --
17 actively manage their attorney relationship and let
18 multiple notices and timelines ellipse before doing
19 anything about it. So, these -- these are cases that have
20 different facts from my set of-- some -- from my set of
21 facts.

22 The third point that I noticed in --in -- in all
23 if -- in many, if not all, was the fact that cure of the
24 default only happened after receiving a default notice.
25 In almost every single case that I saw, there was a notice

1 given and a failure to pay on the notice, or only after
2 the notice.

3 So in summary, I'd like to remind the Court that
4 I cured the payment deficit a mere nine days after the
5 deadline and did so on my own without notice from the FTB
6 and without direction from my trusted adviser. I acted in
7 a manner that demonstrated a high duty of care, despite
8 the information to the contrary, to ensure that I was
9 fulfilling my obligation. And I simply ask that the
10 Appeal Board recognize the difference in my case -- in my
11 case and the facts versus those of the widely cited and
12 precedential cases that I had just referenced.

13 Thank you.

14 No audio.

15 THE STENOGRAPHER: Judge Ridenour, you're muted.

16 JUDGE RIDENOUR: Yes. I forgot to hit unmute.

17 Thank you very much, Mr. Shepela.

18 FTB, do you have any questions for him as a
19 witness?

20 MR. MURADYAN: No questions.

21 JUDGE RIDENOUR: Okay. Thank you.

22 Mr. Shepela, could you just please clarify, for
23 the record, when and how you became aware of the
24 outstanding amount due.

25 MR. SHEPELA: I became aware when I received the

1 physical file from my -- from my CPA, and I was reviewing
2 it one last time before putting it to my files.

3 JUDGE RIDENOUR: Thank you very much.

4 The time is now 10:46.

5 Mr. Muradyan, when you are ready, please begin
6 your presentation.

7 MR. MURADYAN: Thank you.

8

9 PRESENTATION

10 MR. MURADYAN: Good morning. My name is David
11 Muradyan, and with me here is Nancy Parker, my colleague
12 from the Franchise Tax Board. We represent Respondent
13 Franchise Tax Board on this matter.

14 The sole issue on appeal is whether Appellants
15 Kevin and Suzanne Shepela have established reasonable
16 cause to abate the late-payment penalty under Revenue &
17 Taxation Code section 19132 for the 2023 tax year.

18 Before we go over the law, let's review a --
19 let's review the facts. Appellants timely filed their
20 2023 tax return, and the return reported total tax
21 liability of \$171,481 and an ultimate tax due of \$44,530.
22 However, Appellants did not make the payment of \$44,530
23 until April 24th, 2024. Following the payment, FTB issued
24 to Appellants a notice informing them that there was a
25 balance due because the -- because of the payment penalty

1 that was imposed as a result of the late payment.

2 Appellants ultimately made the payment for the
3 late-payment penalty and filed a claim for refund, which
4 FTB denied. Thereafter, Appellants filed this appeal. On
5 appeal, Appellants contend that the late-payment penalty
6 should be abated due to reasonable cause as
7 Appellant-husband's father passed away the prior year;
8 Appellant-husband's mother was in poor health; and that
9 there was miscommunication with their accountants; and
10 more, specifically, that they relied on their counsel.

11 Appellants state that Appellant-husband was
12 communicating back and forth with accountants, and that
13 there were emails prior to April 15, 2024, where the
14 accountant states that there would be an overpayment.
15 Unfortunately, Appellants' arguments are unavailing, and
16 Appellants have not established that any of these events
17 prevented them from timely making a payment in April of
18 2024. The law provides that a late-payment penalty is
19 imposed when a taxpayer fails to pay the amount shown as
20 due on the return on/or before the due date of the return.

21 For the 2023 tax year, the tax payment was due on
22 April 15, 2024, but Appellants made their payment on April
23 24, 2024. As such, FTB imposed a late-payment penalty.
24 When FTB imposes a penalty for late payment, the law
25 presumes that the penalty was imposed correctly, and the

1 burden of proof is on the taxpayer to show that reasonable
2 cause exists for abatement of the late-payment penalty.

3 As noted, Appellants contend that
4 Appellant-husband's father passed away in 2023, and that
5 his mother was also suffering from health concerns. As a
6 general rule, illness may establish reasonable cause where
7 the taxpayer presents credible and competent proof that
8 the circumstances of the illness prevented compliance with
9 the law. However, if the difficulty simply caused the
10 taxpayer to sacrifice the timelessness of one aspect of
11 the taxpayer's affairs to pursue other aspects, the
12 taxpayer must bear the consequences of that choice.

13 FTB is sympathetic to Appellant-husband losing
14 his father in the prior year and dealing with the
15 difficult circumstances surrounding his mother's health.
16 Appellant-husband's father passed away in 2023, whereas
17 the time period for issues associated with the
18 late-payment penalty would have been April of 2024. And
19 Appellant-husband has not demonstrated that these events
20 prevented him from making a timely payment. Furthermore,
21 even if Appellant-husband himself was prevented from
22 making a timely payment, Appellants have not demonstrated
23 why Appellant-wife could not have reviewed the return and
24 made the payment herself.

25 With respects -- with respect to Appellants'

1 primary argument wherein they state that reasonable cause
2 exists because of reliance on counsel, their argument is
3 unpersuasive and contrary to the Boyle case.

4 Specifically, the Boyle case has stated that -- and I
5 quote, "While a taxpayer can rely on a tax professional
6 for tax advice as to a matter of tax law, such as whether
7 taxpayer has a tax liability, failing to timely file the
8 tax return or to pay the tax due, because of their tax
9 professional's oversight or error, is not reasonable
10 cause.

11 Furthermore, the Boyle state -- the Boyle case
12 also states, one does not have to be a tax expert to know
13 that tax returns have fixed filing dates, and that taxes
14 must be paid when they are due. Accordingly, Appellants'
15 reliance on counsel does not constitute reasonable cause
16 because they did not rely on any improper substantive
17 advice but rather, simply missing making the timely
18 payment by reviewing the tax return stating that there was
19 a payment due on making the payment. In the same light,
20 Appellants argue that there was a miscommunication between
21 Appellant-husband and their accountant pointing to the
22 emails where the accountant confirmed that there would be
23 an overpayment for 2023 tax year.

24 They point to an email on April 4th where their
25 accountant confirmed that there was an overpayment. The

1 emails between Appellants and tax counsel were sent prior
2 to the tax return being filed. Specifically, the tax
3 return that was filed on April 5th, 2024, clearly showed
4 that there was a balance due of \$44,530. Again, a simple
5 review of the tax return that was filed would have shown
6 that there was no overpayment and, instead, there was a
7 balance due.

8 In short, it appears to be an oversight on the
9 part of Appellants. Unfortunately, by Appellants' own
10 admission, they did not review the tax return, which they
11 filed on April 5th, 2024, until April 24, 2024, to confirm
12 whether there was an overpayment or not. Unfortunately,
13 taxpayers have a responsibility to review their return
14 when they file, and they have not explained why the
15 payment could not have been made electronically.

16 Failure to timely pay, based on mistake or
17 oversight, is generally considered reasonable cause. As a
18 result, Appellants have not met their burden to show that
19 there's reasonable cause to abate the late-payment
20 penalty. FTB understands Appellants' unfortunate and
21 difficult circumstances but is only authorized to abate
22 penalties as provided by the law, unfortunately, today
23 Appellants have not met their burden to establish
24 reasonable cause to exists to abate the late-payment
25 penalty. For reasons set forth in FTB's opening brief, as

1 well as reasons noted in today's hearing, FTB requests
2 that your Office of Tax Appeals sustain FTB's actions.

3 That will conclude FTB's presentation, and I'm
4 happy to take any questions.

5 JUDGE RIDENOUR: Thank you, Mr. Muradyan. I do
6 not have any questions for the FTB.

7 Mr. Shepela, you have 5 minutes for your closing
8 remarks. But, beforehand, I would like to have you, as a
9 witness, give a response to the FTB indicating that the
10 return was already filed showing a balance due prior to
11 the deadline. Would you like to provide a response to
12 that?

13 MR. SHEPELA: Sure. I once again reliance on my
14 tax professional. I filed an 8879 for them to file on --
15 on my behalf. And -- and I wasn't passively engaged in a
16 process as -- as noted and provided in the exhibits. I
17 was actively working on four different tax files, in
18 addition to my own. I actively made payments on -- on two
19 other files associated with that. So there was no willful
20 neglect or even oversight on -- on my behalf.

21 The review of -- of those taxes would have
22 provided the exact same response to my tax professional.
23 Is there a -- is there an obligation or reliability that
24 should be -- should be satisfied this year, and the
25 response came back the same. There is no liability.

1 There -- there is no payment.

2 Can I clarify, again, is there a -- you know, to
3 follow up multiple times and provide additional due
4 diligence, I do think there is a subjective analysis or
5 subjectivity -- subjectivity of -- of what is reasonable
6 and what is not. So Boyle comes out on both sides of it,
7 and -- and that's the reason that we're here. If it was a
8 straight line and very clear, it would be codified in the
9 Tax Code. It wouldn't -- there wouldn't be hearings like
10 this.

11 JUDGE RIDENOUR: And I have one more question for
12 you before your closing. When was the first time you
13 actually saw the return you had filed on your behalf?

14 MR. SHEPELA: When I saw it -- I saw it maybe
15 the -- well, I saw it the day that I paid the taxes.

16 JUDGE RIDENOUR: That was the first time you saw
17 the return that --

18 MR. SHEPELA: That was the first time I'd seen
19 it, yes.

20 JUDGE RIDENOUR: Okay. Thank you. All right.
21 Those are all the questions I have, Mr. Shepela. You have
22 5 minutes for your closing, should you choose to have one.
23 It's not required.

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overturned.

JUDGE RIDENOUR: Thank you very much,
Mr. Shepela. I do not have any final questions.

I want to thank both parties. In fact, I want to
thank everyone for participating in today's hearing. I am
now concluding the hearing.

The record is now closed, and I will issue an
opinion of OTA's decision within 100 days from today.

Today's hearing in the Appeal of Kevin and
Suzanne Shepela is now closed.

(Proceedings adjourned at 10:59 a.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 23rd day of July, 2025.

ERNALYN M. ALONZO
HEARING REPORTER